

CITY OF SAN JOSÉ, CALIFORNIA  
Department of Planning, Building and Code Enforcement  
801 North First Street, Room 400  
San José, California 95110-1795

## STAFF REPORT

Hearing Date/Agenda Number  
P.C. 8/25/04 Item:

File Number  
CP04-037

Application Type  
Conditional Use Permit

Council District  
3

Planning Area  
Central

Assessor's Parcel Number(s)  
264-39-019

### PROJECT DESCRIPTION

Completed by: Lesley Xavier

Location: Northwest corner of Willow and Locust Streets

Gross Acreage: 1.01

Net Acreage: 1.01

Net Density: n/a

Existing Zoning: R-2 Two-Family Residence,  
CN Commercial  
Neighborhood

Existing Use: Religious assembly

Proposed Zoning: No change

Proposed Use: Conditional Use Permit for 3 wireless communication  
antennas located inside a replacement flagpole 50 feet in height, and the  
placement of a new 143 square foot equipment shelter.

### GENERAL PLAN

Completed by: LX

Land Use/Transportation Diagram Designation  
Public/Quasi-Public

Project Conformance:  
☒ Yes ☐ No  
☐ See Analysis and Recommendations

### SURROUNDING LAND USES AND ZONING

Completed by: LX

North: Duplex, apartment complex

R-2 Two-Family Residence and A (PD)  
Planned Development

East: Single-Family Residential

R-2 Two-Family Residence and CP  
Commercial Pedestrian

South: Commercial

CP Commercial Pedestrian

West: Single-Family Residential

R-2 Two-Family Residence and CP  
Commercial Pedestrian

### ENVIRONMENTAL STATUS

Completed by: LX

☐ Environmental Impact Report adopted  
☐ Negative Declaration circulated on  
☐ Negative Declaration adopted on

☒ Exempt  
☐ Environmental Review Incomplete

### FILE HISTORY

Completed by: LX

Annexation Title: Original City

Date: March 27, 1850

### PLANNING DEPARTMENT RECOMMENDATIONS AND ACTION

☐ Approval  
☒ Approval with Conditions  
☐ Denial  
☐ Uphold Director's Decision

Date: \_\_\_\_\_

Approved by: \_\_\_\_\_

☒ Action  
☐ Recommendation

CONTACT/ APPLICANT	OWNER	DEVELOPER
Peacock Associates Attn: Mark Gagne 5855 Doyle Drive, Suite 108 Emeryville, CA 94608	The Roman Catholic Welfare Corp. of San Jose 325 Willow Street San José, CA 95110	Metro PCS Attn: Kersten Rutherford 1080 Marina Village Parkway Alameda, CA 94501

## PUBLIC AGENCY COMMENTS RECEIVED

Completed by: LX

Department of Public Works

✍ None.

Other Departments and Agencies

✍ None.

## GENERAL CORRESPONDENCE

✍ None.

## ANALYSIS AND RECOMMENDATIONS

**BACKGROUND**

The applicant, Metro PCS, is requesting a Conditional Use Permit to allow the installation of three wireless communication antennas concealed inside a 12.5-inch diameter replacement flagpole located in the parking lot of Sacred Heart Church. The subject site is bounded by a duplex and apartments to the north, single-family detached residential to the east, commercial to the south and single-family residential to the west. The request also includes the placement of a 143 square foot equipment shelter that will be located on the east side of the site between two buildings at ground level. This request is being made because the Zoning Ordinance requires a Conditional Use Permit for wireless communication antennas in the R-2 Two-Family Residence and the CN Commercial Neighborhood Zoning Districts.

In 1996, staff explored the issues of electromagnetic radiation to determine if emissions from the proposed antennas posed a public health concern. Staff found that the low-frequency, low-energy, non-ionizing emission associated with wireless communications antennas were well below the recognized safety standards set by the American National Standards Institute (ANSI). Staff concluded there was no evidence that such transmission would result in adverse health effects to people living or working in the vicinity of the antennas. Further, Staff investigated reports that wireless communication transmission interfered with hearing aids, pace makers, and other electronic devices. Staff determined the reported interference resulted from cordless telephones and not from the antennas.

**GENERAL PLAN CONFORMANCE**

The subject site is designated Public/Quasi-Public on the San José 2020 General Plan Land Use/Transportation Diagram. This category is also used to designate lands used by some private

entities, including public utilities and the facilities of any organization involved in the provision of public services such as gas, water, electricity, and telecommunications. The proposed project is for a telecommunication facility. Therefore, it conforms to the General Plan.

## **ENVIRONMENTAL REVIEW**

The Director of Planning, Building and Code Enforcement has determined that this project is exempt from environmental review under Section 15303 of the provisions of the California Environmental Quality Act (CEQA). Under Section 15303, exemptions consist of new construction or conversion of small structures including the construction and location of limited numbers of new, small facilities or structures; installation of small new equipment and facilities in small structures; and the conversion of existing small structures from one use to another where only minor modifications are made in the exterior of the structure. The proposed project is exempt in that it consists of replacing an existing flagpole with a new flagpole in the same location. This project is consistent with the type of projects exempt from CEQA.

## **ANALYSIS**

The project was analyzed to determine its conformance to the Zoning Ordinance and to City Council Policy 6-20, Land Use Policy for Wireless Communications Antennas, which provides criteria for siting such facilities.

### **Conformance to the Zoning Ordinance**

The R-2 Residence and CN Commercial zoning districts establish front, rear and side setbacks of 25, 20 and 5 feet and 15, 0, and 0 feet respectively. The location of the proposed antennas and equipment cabinet conform to the setback requirements of these zoning districts. Additionally, under section 20.80.1900, specifically related to wireless communication antennas, new antenna structures mounted on existing buildings or structures 60 feet in height or less may be increased over the required maximum height of the zoning district in which it is located provided that all of the following criteria is met:

- a. The overall height of the building or structure, including antennas, does not exceed sixty (60) feet, or the increase in height does not exceed 35% of the existing building or structure, whichever is less; and
- b. The antenna is architecturally integrated into the building and all ancillary equipment is adequately screened; or
- c. The antenna does not add to the visual clutter of the building or structure.

In this case the placement of the antennas will be inside of a new flagpole structure located in the parking lot of an existing building. The new flagpole will replace the old one in the same location. Therefore, the new structure will not add visual clutter to the site. The existing flagpole, which measures approximately 41 feet, 8 inches in height will be replaced with a larger pole that will measure 50 feet in height, which is an increase in the pole height by 8 feet, 4 inches. Thirty-five percent (35%) of the existing structure is approximately 14 feet. Therefore, the new flagpole does not exceed the 60 feet in height and does not exceed 35% of the existing structure height. The proposed project meets the above stated criteria and therefore is in compliance with the Zoning Code.

## **Conformance to City Council Policy 6-20 for Wireless Communications Antennas**

The City Council policy generally discourages wireless communications facilities on residential properties except those developed solely with parks, schools, public utilities, and churches. The proposed project will locate three wireless communications antennas in an existing church parking lot in a residential zoning district.

The Council policy requires building mounted antennas be located a minimum of 35 feet horizontally from any property with a residential use or residential General Plan designation. The antennas are located approximately 135 feet from the closest adjacent residential structure and the closest residentially designated property as shown on the General Plan Land Use/Transportation Diagram. Therefore, the project is consistent with Council policy.

The Council Policy requires freestanding monopoles to be located and designed to minimize public visibility. It also states that "stealth" pole designs should be utilized including incorporating antennas inside the pole itself and that the ancillary equipment shall be screened.

The proposed antennas will be inside of a new flagpole structure located near the center of the site in the parking lot (see attached photo simulations). The ancillary equipment will be located in a new enclosed equipment area that is fenced from view with a block wall and a wood access gate, which will both be painted to match the building.

## **PUBLIC OUTREACH**

Notices of the public hearing were distributed to the owners and tenants of all properties located within 500 feet of the subject site. The Planning Commission Agenda is posted on the City of San José website, which includes a copy of the staff report. Staff has been available to discuss the project with interested members of the public.

## **RECOMMENDATION**

The Planning staff recommends that the Planning Commission approve the requested Conditional Use Permit and include the following findings and conditions in its Resolution.

The Planning Commission finds that the following are the relevant facts regarding this proposed project:

1. This site has a designation of Public/Quasi-Public on the adopted San José 2020 General Plan Land Use/Transportation Diagram.
2. The project site is located in the R-2 Two-Family Residence and the CN Commercial Neighborhood Zoning Districts.
3. The subject site is 1.01-acres in size and is owned and developed with a religious assembly facility and a surface parking lot.
4. The proposed project includes installation of three wireless communication antennas concealed inside of a flagpole structure located in the parking lot for an existing building.

5. The subject Zoning District, R-2 Single-Family Residence and CN Commercial Neighborhood, and has a height limit of 35-feet and 50-feet respectively.
6. Section 20.80.1900A of the Zoning Ordinance allows the maximum height of wireless communications antenna to be increased over the required maximum height of the zoning district in which it is located up to a maximum of 60-feet.
7. The proposed antennas will increase the overall height of the existing structure by 8 feet, 4 inches.
8. The project site is located in the R-2 and CN zoning districts, which establishes front, rear and side setbacks of 25, 20 and 5 feet and 15, 0, and 0 feet respectively.
9. The City Council Policy 6-20: Land Use Policy for Wireless Communication Facilities recommends that new antenna structures provide a 35-foot setback from adjacent residential uses.
10. The proposed improvements are located approximately 135 feet from the closest residential property line.
11. Under the provisions of Section 15302 of the State Guidelines for Implementation of the California Environmental Quality Act (CEQA), this project is exempt from the environmental review requirements of Title 21 of the San José Municipal Code, implementing the California Environmental Quality Act of 1970, as amended.
12. The proposed equipment enclosure will effectively screen the equipment with a new 6-foot tall block wall and wooden access gate.
13. The project does not reduce the existing on-site parking.
14. The proposed project does not include an emergency back-up generator.

This Planning Commission concludes and finds, based upon an analysis of the above facts that:

1. The proposed project conforms to the site's General Plan Land Use Transportation Diagram designation of Public/Quasi-Public.
2. The proposed project complies with all applicable provisions of the Zoning Ordinance.
3. The proposed project is in compliance with the California Environmental Quality Act.
4. The proposed project is consistent with City Council Policy 6-20: Land Use Policy for Wireless Communication Facilities.

Finally, based upon the above-stated findings and subject to the conditions set forth below, the Planning Commission finds that:

1. The proposed use at the location requested will not

- a. Adversely affect the peace, health, safety, morals or welfare of persons residing or working in the surrounding area; or
  - b. Impair the utility or value of property of other persons located in the vicinity of the site; or
  - c. Be detrimental to public health, safety or general welfare; and
2. The proposed site is adequate in size and shape to accommodate the yards, walls, fences, parking and loading facilities, landscaping and other development features prescribed in this title, or as is otherwise required in order to integrate said use with the uses in the surrounding areas; and
  3. The proposed site is adequately served:
    - a. By highways or streets of sufficient width and improved as necessary to carry the kind and quality of traffic such use would generate; and
    - b. By other public or private service facilities as are required.

In accordance with the findings set forth above, a Conditional Use Permit to use the subject property for said purpose specified above and subject to each and all of the conditions hereinafter set forth is hereby granted. This Planning Commission expressly declares that it would not have granted this permit except upon and subject to each and all of said conditions, each and all of which conditions shall run with the land and be binding upon the owner and all subsequent owners of the subject property, and all persons who use the subject property for the use conditionally permitted hereby.

### CONDITIONS PRECEDENT

This Conditional Use Permit shall have no force or effect and the subject property shall not be used for the hereby permitted uses unless and until all things required by the below-enumerated precedent conditions shall have been performed or caused to be performed and this Resolution has been recorded with the County Recorder.

1. **Acceptance and Payment of Recording Fees.** The "Acceptance of Permit and Conditions" form shall be **signed, notarized, and returned** to the Department of City Planning within **60 days** from the date of issuance of the resolution granting the permit. *Failure to do so will result in this permit automatically expiring regardless of any other expiration date contained in this permit.* Fees for recording a Certificate of Permit with the Recorder for the County of Santa Clara must be submitted along with the Acceptance Form.

### CONCURRENT CONDITIONS

The subject property shall be maintained and utilized in compliance with the below-enumerated conditions throughout the life of the permit:

1. **Conformance with Plans.** Construction and development shall conform to approved development plans entitled, "Metro PCS Sacred Heart Church SFA-Z08-626-A" dated April 1, 2004, on file with the Department of Planning, Building and Code Enforcement.

2. **Colors and Materials.** All building, structures and fencing colors and materials are to be those specified on the approved plan set.
3. **Flagpole.** The flagpole shall be used in accordance with Title 23 Sign Ordinance of the San Jose Municipal Code.
4. **Nuisance.** This use shall be operated in a manner that does not create a public or private nuisance. Any such nuisance must be abated immediately upon notice by the City.
5. **Construction Hours.** Construction shall be limited to the hours of 7:00 a.m. to 7:00 p.m. Monday through Friday for any on-site or off-site work within 500 feet of any residential unit.
6. **Generators.** This project does not permit the use temporary or permanent emergency back-up generators unless otherwise approved by the Director of Planning.
7. **Lighting.** This permit allows no new on-site lighting.
8. **Outside Storage.** No outside storage is permitted.
9. **Sign Approval.** No signs are approved at this time. All proposed signs shall be subject to approval by the Director of Planning.
10. **Tree Removals.** No tree larger than 56 inches in circumference, at a height 24 inches above the natural grade slope, may be removed without a Tree Removal Permit issued by the Director of Planning.
11. **Building Clearance for Issuing Permits.** Prior to the issuance of a Building Permit, the following requirements must be met to the satisfaction of the Chief Building Official:
  - a. *Construction Plans.* This permit file number, CP04-037 shall be printed on all construction plans submitted to the Building Division.
  - b. *Emergency Address Card.* The project developer shall file an Emergency Address Card, Form 200-14, with the City of San José Police Department.
  - c. *Construction Conformance.* A project construction conformance review by the Planning Division is required. Planning Division review for project conformance will begin with the initial plan check submittal to the Building Division. Prior to final inspection approval by the Building Department, Developer shall obtain a written confirmation from the Planning Division that the project, as constructed, conforms with all applicable requirements of the subject Permit, including the plan sets. To prevent delays in the issuance of Building Permits, please notify Planning Division staff at least one week prior to the final Building Division inspection date.

10. **Hazardous Materials.** Any hazardous materials regulated by Chapter 17.68 of the San José Municipal Code on the site must be used and stored within approved buildings and/or within areas specified on the approved plan set, if any, in full compliance with the City's Hazardous Material Ordinance and the Hazardous Materials Management Plan for the site approved by the San José Fire Prevention Bureau.
11. **Anti-Graffiti.** The applicant shall remove all graffiti from buildings, structures, fencing, and wall surfaces within 48 hours of defacement.
12. **Certification.** Pursuant to San José Municipal Code, Section 15.10.486, certificates of substantial completion for landscape and irrigation installation shall be completed by licensed or certified professionals and provided to the Department of Planning, Building and Code Enforcement prior to approval of the final inspection of the project.
13. **Discontinuation of Use.** Upon discontinuation of the use of the subject antennas, the applicant shall remove all antenna improvements and related equipment/enclosures associated with this permit within 30 days.
14. **Co-location.** The owner(s) and operators of the proposed antenna support structure shall allow the co-location of PCS antennas for other providers. Other wireless providers shall also be allowed to add on to existing at grade equipment enclosures.

## CONDITIONS SUBSEQUENT

1. **Permit Expiration.** This Conditional Use Permit shall automatically expire five (5) years from and after the date of adoption of the Resolution by the Planning Commission, or by the City Council on appeal, granting this Permit, if within such two-year period, the proposed use of this site or the construction of buildings has not commenced, pursuant to and in accordance with the provisions of this Conditional Use Permit. The date of adoption is the date the Resolution granting this Conditional Use Permit is approved by the Planning Commission. However, the Director of Planning may approve a Permit Adjustment to extend the validity of this Permit for a period of up to two years. The Permit Adjustment must be approved prior to the expiration of this Permit.
2. **Revocation, Suspension, Modification.** This Conditional Use Permit may be revoked, suspended or modified by the Planning Commission, or by the City Council on appeal, at any time regardless of who is the owner of the subject property or who has the right to possession thereof or who is using the same at such time, whenever, after a noticed hearing in accordance with Part 3, Chapter 20.44, Title 20 of the San José Municipal Code it finds:
  - a. A violation of any conditions of the Conditional Use Permit was not abated, corrected or rectified within the time specified on the notice of violation; or
  - b. A violation of any City ordinance or State law was not abated, corrected or rectified within the time specified on the notice of violation; or
  - c. The use as presently conducted creates a nuisance.